IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4093 OF 2005
IN
C.R.NO. 25 OF 2005

Suryakant D.Shinde ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.Satish Maneshinde Advocate for Applicant
Mr.V.B.konde-Deshmukh A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 4,2005

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking anticipatory bail in C.R.No. 25 of 2005 of Yellow Gate Police Station. The said offence is under Sections 409, 461, 380 r.w. 34 and 120-B of IPC. It is the prosecution case that one container arrived at BPT Fair basin from overseas on 17.2.2005, it was opened on 18.2.2005 in the presence of the concerned

representative and it was noticed that five pallets of ‘Demethyl oxide ’ was short. On this basis, a crime came to be registered. During the course of investigation, some persons came to be arrested. During the interrogation, they stated that the present applicant who is an Assistant Security Officer with B.P.T. was the main conspirator behind the crime.

3. The learned advocate for the applicant has submitted that at the relevant time, the applicant was not on duty i.e. from 12.1.2005 to 13.3.2005, the applicant was not on duty. In this respect, it is pertinent to note that it is not the prosecution case that the applicant was present on 18.2.2005 or 17.2.2005 or that he actually took out the goods from the container. The case against the applicant is that he entered into a conspiracy with others to take out the goods from the container, hence even assuming that on 17.2.2005 or 18.2.2005, the applicant was not present at BPT it would be of no significance.

4. The statements of Ravindra Mahadik and

Mr.Mandavkar clearly implicate the applicant. Their statements show that the applicant is the conspirator in many cases of theft of goods from the containers. The learned advocate for the applicant has submitted that the statements of these witnesses cannot be relied upon because in the remand application of co-accused Pervez, both these persons have been shown as accused. The learned A.P.P. has stated that initially it was suspected that these persons were also involved in the crime, but thereafter, on investigation, it was found that Ravindra Mahadik and Mandavkar had nothing to do with the crime, hence they have been made witnesses in this case. As stated earlier statements of these two witnesses clearly implicate the accused. Besides this the other co-accused have also implicated the applicant. No doubt the statements of co-accused cannot be relied upon to convict the applicant but at this stage when the investigation is going on, they provide a valuable clue to the Investigating Agency.

5. It is submitted on behalf of the applicant that in fact, he has been making complaints to various

authorities about the theft at the Port Trust and in such case, he himself could not have been involved in this crime. It is further submitted that on account of these various complaints made by the applicant in respect of theft at the port trust, the applicant has been falsely involved in the present case. In this respect it is to be noted that the material gathered by the investigating agency points out an accusing finger towards the applicant. In the case of **Directorate of Enforcement Vs. P.V.Prabhakar Rao;[1997 S.C.C. (Cri.) 978],** the Supreme Court has observed that when the material gathered by the prosecution is such as to point out an accusing finger towards the accused, it is not a fit case to grant anticipatory bail.

6. Looking to the material on record, I am of the opinion that Investigating Agency deserves a fair chance to investigate as the material collected by the Investigating Agency prima facie shows the involvement of the applicant in the crime, hence, I am not inclined to grant anticipatory bail.

7. Application is rejected.

[V.K.TAHILRAMANI,J.]